

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

777 S. Figueroa Street, Suite 3700
Los Angeles, California 90017

FEIN 36-1326630

October 4, 2005

Post Confirmation Trust for
Fleming Companies, Inc.
5801 N. Broadway Ext Ste 100
Oklahoma City, OK 73118

ATTN: Steve Eaton

Invoice # 2948764

IN THE MATTER OF **Berry, Wayne Litigation**
 File No. 41445-0006

For legal services rendered through August 31, 2005 (see attached Description of Legal Services for detail)	\$	80,077.50
Less: Courtesy Discount	-\$	1,873.75
Adjusted legal services	\$	78,203.75
For disbursements incurred through August 31, 2005 (see attached Description of Expenses for detail)	\$	4,808.40
Total for legal services rendered and expenses incurred	\$	83,012.15

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Summary of Hours Billed

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Wendy K Adams	3.25	225.00	731.25
Damian D Capozzola	116.00	480.00	55,680.00
Eric C Liebeler	11.00	575.00	6,325.00
Romana O Samad	9.50	340.00	3,230.00
Neal F San Diego	111.25	110.00	12,237.50
Total	251.00		\$ 78,203.75

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Description of Legal Services

<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
8/01/05	7.50	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.5); index correspondence with attachments into case management database (6.0).
8/01/05	3.75	Damian D Capozzola	Communications and analysis re APS claim and reconsideration issues; revise summary judgment motion.
8/02/05	7.50	Neal F San Diego	Index correspondence and pleadings with attachments into Lotus notes database.
8/02/05	5.25	Damian D Capozzola	Communications with M. Walker, E. Liebeler, and L. Smith re reconsideration issues; review and analysis of Berry reply re reconsideration and analysis re potential surreply; revise summary judgment motion re damages and communications with team members re same.
8/02/05	1.50	Eric C Liebeler	Review Berry's reply on reconsideration.
8/03/05	7.50	Neal F San Diego	Index correspondence with attachments into Lotus notes database (5.5); image correspondence with attachments into database (2.0).
8/03/05	5.25	Damian D Capozzola	Communications with M. Walker, E. Liebeler, and L. Smith re reconsideration issues and potential surreply; communications with O. Samad and analysis re APS matter; review and revise summary judgment motion re damages issues.
8/04/05	7.50	Neal F San Diego	Analyze and prepare pleadings with attachments for indexing (1.5); index pleadings with attachments into case management database (6.0).

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
8/04/05	2.00	Damian D Capozzola	Draft APS discovery and motion re Rule 68 issues.
8/04/05	6.75	Damian D Capozzola	Review and revise summary judgment motion, and legal research re same; draft appeal reply; analysis and communications re APS matter, and draft discovery re same; communications with M. Walker and analysis re technical issues; review T. Ueno deposition transcript and communications with T. Hogan re production of documents.
8/05/05	7.50	Neal F San Diego	Index correspondence with attachments into case management database (5.0); image correspondence with attachments into database (2.5).
8/05/05	4.25	Damian D Capozzola	Review and revise APS motion re Rule 68 issues; review and analysis of APS data and exhibits re Rule 68 motion.
8/05/05	2.50	Damian D Capozzola	Draft declarations of D. Capozzola and B. Christensen, and communications re same; review and revise APS motion.
8/06/05	3.00	Damian D Capozzola	Communications with E. Liebler and analysis re APS issue; revise declaration exhibits; draft and revise discovery to serve on APS and communications re same; analysis re Rule 2004 motions and communications re same.
8/06/05	1.25	Damian D Capozzola	Draft letter to R. Mersky; communications with team members re APS issue.
8/07/05	.25	Damian D Capozzola	Communications and analysis re APS issues.
8/08/05	3.50	Neal F San Diego	Index correspondence with attachments into case management database.
8/08/05	4.75	Damian D Capozzola	Review appellate materials and draft outline; review and analysis of relevant cases; communications with R.

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
			Mead re B. Christensen declaration and APS issues.
8/08/05	4.50	Damian D Capozzola	Review appellate materials and draft reply brief; communications and analysis re APS issues and Rule 2004 issues.
8/09/05	1.50	Neal F San Diego	Index pleadings with attachments into case management database.
8/09/05	8.25	Damian D Capozzola	Draft appellate brief; communications with R. Mead re. B. Christensen declaration and APS issues; review Guidance filing re discovery issues.
8/10/05	6.50	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.5); index correspondence with attachments into case management database (5.0).
8/10/05	5.50	Damian D Capozzola	Draft and revise appeal brief; communications and analysis re B. Christensen.
8/10/05	.25	Eric C Liebeler	Review correspondence.
8/11/05	2.00	Damian D Capozzola	Communications and analysis re Berry bankruptcy claims; communications and analysis re reconsideration issues; communications and analysis re document production issues.
8/11/05	.25	Eric C Liebeler	Review order; discuss with client and team.
8/12/05	2.50	Neal F San Diego	Index pleadings with attachments into Lotus notes database.
8/12/05	10.00	Damian D Capozzola	Communications and analysis re reconsideration order and case management issues; review and revise appellate reply; review letter from T. Hogan re F1 project and communications with team members re same, and begin drafting response; communications and analysis re documents produced by T.

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
			Ueno.
8/12/05	1.50	Eric C Liebeler	Review appeal brief.
8/13/05	5.25	Damian D Capozzola	Draft objection re Berry administrative claims; draft response to Berry letter re F-1 project and communications re same.
8/15/05	6.50	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.0); index correspondence with attachments into Lotus notes database (5.5).
8/15/05	2.25	Damian D Capozzola	Communications with T. Hogan and team members re T. Ueno documents, and letter to L. Chong re same.
8/15/05	1.75	Eric C Liebeler	Work on discovery issue.
8/16/05	7.50	Neal F San Diego	Index correspondence with attachments into case management database (5.5); image correspondence with attachments into database (2.0).
8/16/05	3.75	Damian D Capozzola	Review and revise letter to C. Matsui; communications and analysis re Ueno documents; review and revise letter to C. Matsui, and prepare and compile exhibits re same; review and analysis of letter from R. Fujichaku and communications with L. Smith re same; communications with O. Samad and analysis re APS matter.
8/17/05	2.00	Romana O Samad	Review citations and prepare document for filing.
8/17/05	1.50	Neal F San Diego	Index pleadings with attachments into case management database.
8/17/05	5.00	Neal F San Diego	Assist in preparation of response brief to the 9th circuit.
8/17/05	4.75	Damian D Capozzola	Communications with counsel and analysis re Hilo Fish, discovery, and Ueno deposition issues; communications

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
			with team members re appeal issues; review and revise appeal brief; communications and analysis re F-1 documentation.
8/18/05	4.50	Neal F San Diego	Index correspondence with attachments into case management database.
8/18/05	2.00	Damian D Capozzola	Review and revise appeal brief, prepare for filing, and communications with team members re same; communications with J. Kinrich and analysis of Ueno issues; review and analysis of summary judgment brief and related papers, and communications re same.
8/19/05	3.25	Wendy K Adams	Attention to finalization, filing and service of Appellant's Reply and Response Brief of Fleming Companies, Inc.; conferences with D. Capozzola and F. Carlow re same.
8/19/05	7.25	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.5); index correspondence with attachments into case management database (5.75).
8/19/05	.75	Damian D Capozzola	Communications re appeal filing; draft declaration for J. Kinrich and communications re same.
8/21/05	1.00	Damian D Capozzola	Review and revise Berry summary judgment motion and draft related declaration.
8/22/05	2.50	Romana O Samad	Research issues for Summary Judgment motion and draft short memo.
8/22/05	5.50	Damian D Capozzola	Review and revise summary judgment brief and communications with E. Liebler re same.
8/22/05	5.25	Damian D Capozzola	Communications and analysis re T. Ueno reports; review and revise summary judgment filing and related papers, and communications with E. Liebler re same.

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
8/22/05	4.25	Eric C Liebeler	Edit summary judgment brief.
8/23/05	3.00	Romana O Samad	Work on research question for Berry Summary Judgment Motion.
8/23/05	1.50	Neal F San Diego	Index pleadings with attachments into case management database.
8/23/05	6.00	Damian D Capozzola	Review and revise summary judgment brief and communications with E. Liebeler re same; review and analysis of cases re damages and causation; draft supporting documents (statement of facts, notice of motion and motion); communications with J. Kinrich re draft motion.
8/23/05	1.50	Eric C Liebeler	Edit summary judgment brief.
8/24/05	2.00	Romana O Samad	Finalize brief for filing.
8/24/05	4.50	Neal F San Diego	Assist in preparation of PCT's motion for summary judgment.
8/24/05	4.00	Neal F San Diego	Index correspondence with attachments into Lotus notes database.
8/24/05	7.25	Damian D Capozzola	Review and revise summary judgment brief and related papers, and prepare for filing; communications with L. Smith, A. Teranishi, E. Liebeler, and O. Samad re same and case management and strategy issues..
8/25/05	4.00	Neal F San Diego	Index correspondence with attachments into case management database (2.0); image correspondence with attachments into database (2.0).
8/25/05	.25	Damian D Capozzola	Communications re case management issues.
8/26/05	4.00	Neal F San Diego	Index correspondence with attachments into case management database (3.0); image correspondence with attachments into database (1.0).

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
8/26/05	.25	Damian D Capozzola	Communications and analysis re case management and strategy issues.
8/29/05	1.50	Damian D Capozzola	Communications and analysis re case management and strategy issues, executing on copyright, and discovery sanctions order issued against Berry.
8/30/05	7.50	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.5); index correspondence with attachments into Lotus notes database (4.0); image correspondence with attachments into database (2.0).
8/30/05	.25	Damian D Capozzola	Communications and analysis re Berry appeal of sanctions order and case management issues.
8/31/05	2.00	Neal F San Diego	Index pleadings with attachments into case management database.
8/31/05	.75	Damian D Capozzola	Analysis and communications with E. Liebler and L. Smith re case management and strategy issues; communications re file maintenance issues.
	251.00		TOTAL HOURS

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Description of Expenses

<u>Date</u>	<u>Description</u>	<u>Amount</u>
4/26/05	Telephone call to: NEWYORKCTY,NY 212-478-0661	8.40
4/26/05	Telephone call to: NEWYORKCTY,NY 212-735-3000	4.00
8/01/05	Telephone call to: S SAN,CA 650-743-3449	.60
8/02/05	Telephone call to: S SAN,CA 650-743-3449	.80
8/02/05	Lillian Lai, Working Group Meal/K&E Only, Los Angeles, CA, 08/02/05, (Trial preparation)	22.81
8/04/05	Telephone call to: STATE OF,HI 808-535-5711	.60
8/14/05	GENESYS CONFERENCING, INC. - Telephone - 07/19/05 Conference call	8.93
8/14/05	GENESYS CONFERENCING, INC. - Telephone - 07/20/05 Conference call	1.08
8/14/05	GENESYS CONFERENCING, INC. - Telephone - 07/20/05 Conference call	9.05
8/14/05	GENESYS CONFERENCING, INC. - Telephone - 07/21/05 Conference call	7.27
8/14/05	GENESYS CONFERENCING, INC. - Telephone - 07/21/05 Conference call	12.15
8/14/05	GENESYS CONFERENCING, INC. - Telephone - 07/21/05 Conference call	.96
8/14/05	GENESYS CONFERENCING, INC. - Telephone - 08/02/05 Conference call	6.31
8/14/05	GENESYS CONFERENCING, INC. - Telephone - 08/03/05 Conference call	1.55
8/14/05	GENESYS CONFERENCING, INC. - Telephone - 08/03/05 Conference call	4.86
8/15/05	Fax phone charge to 808-528-4997	.80
8/15/05	Fax page charge to 808-539-8799	9.00
8/15/05	Fax page charge to 808-524-3838	9.00
8/15/05	Fax page charge to 808-528-4997	9.00
8/15/05	Fax page charge to 808-523-8899	9.00
8/15/05	Fax page charge to 808-528-4997	6.75
8/15/05	LIVENOTE INC - Court Reporter Fee/Deposition - Deposition of Thomas Ueno on 7/22/05	349.75
8/15/05	LIVENOTE INC - Court Reporter Fee/Deposition - Deposition of Thomas Ueno in Hawaii	2,440.35

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8/18/05	Telephone call to: PHILADELPHIA, PA 610-443-1400	8.60
8/19/05	Telephone call to: PHILADELPHIA, PA 610-443-1400	3.40
8/19/05	WHITMONT LEGAL TECHNOLOGIES, INC. - Outside Copy/Binding Services - Fleming Reply Brief - 9th circuit	82.89
8/22/05	Fax phone charge to 212-255-5858	2.80
8/22/05	Fax page charge to 212-255-5858	51.75
8/23/05	Fax phone charge to 212-255-5858	1.40
8/23/05	Fax page charge to 212-255-5858	13.50
8/23/05	Fax page charge to 212-921-5212	5.25
8/23/05	Fax page charge to 310-798-8926	6.00
8/24/05	Damian Capozzola, Cellular Service, Cingular, 7/9/05-8/8/05, 08/24/05, (Telephone Charges)	5.44
	Color Copies	84.00
	Standard Copies	1,565.90
	Scanned Images	54.45
	Total Expenses	\$ 4,808.40